

REMARKS

Status of the Claims

Claims 1, 4, 7, 9, 22, 24, 26, 28, 30, 31, 37, 41-43, 46, 49, 53, 57-60, 77 and 78 are currently pending in this application. In this amendment, new claims 79 and 80 are added, and claim 1 is amended to export one of its limitations into claim 80. Support for new claim 79 may be found in the application as filed, for example, at page 35, lines 20-23 (Example 3); page 36, lines 13-20 (Example 4), and in Table 1 (pages 36-43). Thus, no new matter has been added. Upon entry of the amendments, claims 1, 4, 7, 9, 22, 24, 26, 28, 30, 31, 37, 41-43, 46, 49, 53, 57-60 and 77-80 will be pending and subject to further examination. Entry of the amendments and reconsideration on the merits in view of the following comments is respectfully requested.

With respect to all amendments, Applicants have not dedicated or abandoned any unclaimed subject matter and moreover have not acquiesced to any rejections and/or objections made by the Patent Office. Applicants expressly reserve the right to pursue prosecution of any presently excluded subject matter or claim embodiments in one or more future continuation and/or divisional application(s).

Species Election

The Office has required one of the following species elections: (i) a single probe from Table 1, or (ii) a combination of probes listed in Table 1. The Office cautioned Applicants that claim 78 will be withdrawn if a single combination of less than all the probes is elected.

Applicants hereby provisionally elect, with traverse, the combination of all the probes listed in Table 1 (SEQ ID NOs: 1-214). Claims 1, 4, 7, 9, 22, 24, 26, 28, 30, 31, 37, 41-43, 46, 49, 53, 57-60 and 77-80 read on the elected species.

Applicants respectfully traverse the species election for the following reasons. First, the present invention is directed to methods of HLA typing using HLA-A, HLA-B and HLA-DRB1

probes, thereby providing broad coverage of the different HLA types. As stated at page 36, lines 14-18 of the application as filed (paragraph [0159] of U.S. Patent Pub. No. 2007/0134661 A1):

There are 43 HLA-A alleles have been cloned which distributed to 19 allele groups and covering 95.0% of the medium types; For HLA_B, 47 alleles have been cloned which distributed to 29 allele groups and covering 80% of the medium types; For HLA_DR, 22 alleles have been cloned which contributed to 14 allele groups and covering 87.5% of the medium types.

Therefore, limiting the claims to only some HLA probes effectively eviscerates the scope of the subject matter intended by Applicants. Moreover, it is respectfully submitted that examining the combination of all the nucleotide sequences listed in Table 1 likely involves essentially the same amount of searching as examining each of the nucleotide sequences individually, which means that no additional search burden would be imposed in the absence of the species election.

Additionally, the Office is respectfully referred to MPEP § 803.04, which states that “[t]he identification of any allowable sequence(s) will cause all combinations containing the allowed sequence(s) to be allowed” and “[b]ased upon the finding of allowable sequences, claims limited to the allowable sequences as in example (A) [‘an isolated and purified DNA fragment comprising DNA having at least 95% identity to a DNA sequence selected from SEQ ID Nos. 1-1,000’], all combinations, such as in examples (B) [‘a combination of DNA fragments comprising SEQ ID Nos. 1-1,000’] and (C) [‘a combination of DNA fragments, said combination containing at least thirty different DNA fragments selected from SEQ ID Nos. 1-1,000’], containing all allowable sequences and any patentably indistinct sequences will be rejoined and allowed” (emphasis added).

Accordingly, Applicants hereby expressly reserve their right to pursue any of the nonelected species in a rejoinder and/or one or more divisional applications claiming priority to the present application.

CONCLUSION

If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing **docket No. 514572001200**. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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